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MOTOR WORKS, LLC

FILED

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RICHARD W. WIEKING
U.S. DISTRICT COURT
SAN FRANCISCO, CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RS

(San Francisco Division)

CV 08

3608

MOTOR WORKS LLC,

Plaintiffs,

v.

SAFER TECHNOLOGIES, INC., CERMA
TECHNOLOGY, INC., GEORGE
ACKERMAN, MARY STRANAHAN,
NICHOLAS STREIT, TIM STREIT and
EDWARD HALBACH

Defendants.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff MOTOR WORKS LLC ("Plaintiff"), for its complaint herein against defendant
SAFER TECHNOLOGIES, INC., CERMA TECHNOLOGY, INC., GEORGE ACKERMAN,
MARY STRANAHAN, TIM STREIT, NICHOLAS STREIT, and EDWARD HALBACH
alleges as follows:

JURISDICTION AND VENUE

1. This action arises in part under 15 USC §1051-1127 (hereinafter the
"Lanham Act") and the common law of unfair competition, as more fully set forth below.

1 2. This Court has jurisdiction of this action under 28 U.S.C. §§1331, 1338(a)
2 and (b), and under the Lanham Act.

3 3. Venue is proper in this judicial district under 28 U.S.C. §§1391(b) and (d)
4 because a substantial part of the events or omissions giving rise to the claims occurred here.

5 INTRADISTRICT ASSIGNMENT

6 4. The San Francisco Division is the appropriate intradistrict assignment as a
7 substantial part of the events or omissions giving rise to this action occurred within one or more
8 of its associated counties.

9 THE PARTIES

10 5. Plaintiff, MOTOR WORKS LLC, is a corporation organized under the
11 laws of the State of Nevada with its principal place of business in Texas and offices in the state
12 of California.

13 6. Plaintiff is informed and believes, and on that basis alleges, that

14 (i) Defendant SAFER TECHNOLOGIES, INC. is a corporation organized
15 under the laws of the State of Delaware and that its principal place of business in
16 Montana;

17 (ii) Defendant CERMA TECHNOLOGY, INC. is a corporation and has its
18 principal place of business in Iowa;

19 (iii) Defendant GEORGE ACKERMAN is a resident of Montana;

20 (iv) Defendant MARY STRANAHAN is a resident of Montana;

21 (v) Defendant NICHOLAS STREIT is a resident of Iowa;

22 (vi) Defendant TIM STREIT is a resident of Iowa; and

23 (vii) Defendant EDWARD HALBACH is a resident of Iowa.
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COMMON ALLEGATIONS

7. Plaintiff is a leading developer, manufacturer and distributor of certain ceramic lubrication oil additives. Due to the nature of its business, plaintiff's intellectual property is one of its most valuable assets.

8. Plaintiff has been continuously involved in developing, manufacturing and distributing ceramic lubrication oil additives since its inception. Since early 2006 it has marketed oil additives under the trademark CERMA including the marks CERMA, CERMA LUBRICATION, CERMAX, CERMA ENGINE LUBE, CERMA LUBE, CERMA ADVANCED LUBRICATION TECHNOLOGY, CERMA ORGANIC establishing a family of CERMA marks. Plaintiff has advertised, marketed and distributed its products under its CERMA family of marks throughout the United States and internationally. Plaintiff's trademark has become, through widespread and favorable industry acceptance and recognition, an asset of substantial value as a symbol of Plaintiff, its quality products and its good will.

9. Plaintiff has devoted substantial time, effort and resources to the development and promotion throughout the United States of the CERMA family of marks and of the goods sold under said marks both domestically and internationally. Plaintiff has also expanded its use of CERMA into a family of marks associated with its products including motor coatings. As a result of these promotional efforts, the purchasing public has come to know, rely upon, and recognize the business and services of Plaintiff by such name and mark. By virtue of Plaintiff's marketing efforts and expenditures, and as a result of the excellence of its products, Plaintiff's marks have achieved a valuable reputation and a high degree of goodwill.

10. Plaintiff has recently learned that Defendants are using confusingly similar marks and marks owned by Plaintiff for oil additives. Defendant has also filed federal trademark applications for certain marks, including: CERMAX and CERMA ADVANCED LUBRICATION TECHNOLOGY.

11. Plaintiff is informed and believes, and on that basis alleges, that at least Defendant CERMA TECHNOLOGY, INC. and SAFER TECHNOLOGIES, INC. manufacture or have manufactured and sell oil additives improperly reverse engineered in violation of a

1 distribution agreement between MOTOR WORKS, LLC and CERMA TECHNOLOGY, INC..
2 Plaintiff is informed and believes, and on that basis alleges, that at least these Defendants are a
3 direct competitor of Plaintiff in this respect. That the respective products are directly competitive
4 is evinced by a page from Defendant CERMA TECHNOLOGY, INC.'s website which uses
5 Plaintiff's promotional and research materials as if Defendants' own.

6 12. Defendant has adopted and used the trademarks CERMAX and CERMA
7 ADVANCED LUBRICATION TECHNOLOGY in interstate commerce for oil additives, despite
8 Plaintiff's established common law rights in, and imminent registration for, trademarks within
9 the CERMA family of marks. Plaintiff is informed and believes, and on that basis alleges, that
10 Defendant adopted its marks with full knowledge of Plaintiff's products and trademarks and with
11 the intention that consumers would be confused into believing that Defendants' products were
12 sponsored, associated or affiliated in some way with Plaintiff and its products.

13 13. Plaintiff has no control over the nature and quality of Defendants'
14 products. Any failure, neglect or default by Defendant in providing such products will reflect
15 adversely on Plaintiff as the believed source of origin thereof, hampering efforts by Plaintiff to
16 continue to protect its reputation for high quality products. This will cause Plaintiff, *inter alia*, to
17 lose sales and the benefit of its considerable expenditures to promote its products under its
18 CERMA family of marks, all to Plaintiff's detriment.

19 14. Because Plaintiff's and Defendants' products are directly competitive, it is
20 natural for consumers to assume that said products and their sources are associated or affiliated.
21 Such a result significantly undermines Plaintiff's substantial efforts to establish its identity in this
22 field. Plaintiff has requested that Defendant cease and desist from infringing Plaintiff's
23 trademark, but Defendant has refused to comply with said requests. Despite Plaintiff's requests,
24 Defendant, with actual notice of the infringement, willfully and blatantly continues to advertise
25 and market its products under the CERMAX and CERMA ADVANCED LUBRICATION
26 TECHNOLOGY marks. Said acts of infringement will cause further irreparable injury to
27 Plaintiff if Defendant is not restrained by this Court from further violation of Plaintiff's rights,
28 and Plaintiff has no adequate remedy at law.

COUNT I

(FALSE DESIGNATION OF ORIGIN)

15. Plaintiff incorporates herein all of the allegations contained in Paragraphs 1 through 14 of this Complaint.

16. Plaintiff's CERMA family of trademarks have become uniquely associated with, and hence identifies, Plaintiff. Defendants' interstate use of the designation CERMAX and CERMA ADVANCED LUBRICATION TECHNOLOGY marks is a false designation of origin, or a false representation, that wrongfully and falsely designates Defendants' products as originating from, or being connected with, Plaintiff and constitutes the use of false descriptions or representations in interstate commerce. Defendants' use is likely to deceive consumers into believing that Defendants' products are those of or associated with Plaintiff, and as a consequence, Defendants' use is likely to divert, and has diverted, consumers away from Plaintiff's products.

17. Defendants' actions described above and specifically, without limitation, Defendants' use of the CERMAX and CERMA ADVANCED LUBRICATION TECHNOLOGY marks to promote its goods to the same audience as that for Plaintiff's goods constitutes a false designation of origin and unfair competition in violation of the Lanham Act.

18. Defendants' adoption and use of a mark so similar to Plaintiff's CERMA family of marks has caused, and continues to cause, irreparable injury to the value and goodwill of Plaintiff's mark, as well as to Plaintiff's business, goodwill and reputation. Defendants' actions, if not enjoined, will continue, including the sale of its services through the same channels of trade used by Plaintiff and to the same customers targeted by Plaintiff. Plaintiff has no adequate remedy at law in that the amount of its damages is difficult to ascertain with certainty.

19. As a result of Defendants' false designation of origin and unfair competition, Plaintiff has incurred and will continue to incur damages in an amount to be proven at trial consisting of, among other things, actual diversion of trade and diminution in the value of the goodwill associated with its trademark.

20. Defendants' actions as described above are deliberate, willful, fraudulent and without any extenuating circumstances, and constitute a knowing violation of Plaintiff's rights. Upon registration of one or more of its CERMA family of marks, Plaintiff is entitled to recover three times the amount of its actual damages and attorneys' fees and costs incurred in this action, as this is an "exceptional" case under Section 35 of the Lanham Act, 15 U.S.C. §1117.

COUNT II

(COMMON LAW UNFAIR COMPETITION)

21. Plaintiff incorporates herein all of the allegations contained in Paragraphs 1 through 20 of this Complaint.

22. By virtue of Defendants' acts as pleaded above, Defendant has engaged in unfair competition with Plaintiff.

COUNT III

(CALIFORNIA UNFAIR COMPETITION LAW)

23. Plaintiff incorporates herein all of the allegations contained in Paragraphs 1 through 22 of this Complaint.

24. By virtue of Defendants' acts as pleaded above, Defendant has engaged in unfair competition in violation of California Business and Professions Code §§17200, et seq.

25. Defendants' acts of unfair competition and false advertising have caused and continue to cause irreparable injury to the value and goodwill of Plaintiff's CERMA family of marks, as well as to Plaintiff's business, goodwill and reputation. Defendants' actions, if not enjoined, will continue through the same channels of trade used by Plaintiff and to the same customers targeted by Plaintiff. Plaintiff has no adequate remedy at law in that the amount of its damages is difficult to ascertain with certainty.

26. As a result of Defendants' acts of unfair competition and false advertising, Plaintiff has incurred damages in an amount to be proven at trial consisting of, among other things, actual diversion of its trade and diminution in the value of goodwill associated with Plaintiff and the CERMA family of marks.

COUNT IV

(CALIFORNIA ANTI-DILUTION VIOLATION)

27. Plaintiff incorporates herein all of the allegations contained in Paragraphs 1 through 26 of this Complaint.

28. Defendants' acts, as pleaded above, have caused injury and there exists a further likelihood of injury, to Plaintiff's business reputation and of dilution of the distinctive quality of Plaintiff's CERMA family of marks and forms of advertisement of same, within California Business and Professions Code §14330.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands:

1. That Defendant, its officers, agents, servants, employees, and attorneys and all those persons in active concert or participation with them be forthwith preliminarily and thereafter permanently enjoined and restrained from:

a. Using any of the CERMA family of trademarks or any confusingly similar designation alone or in combination with other words, as a trademark, trade name component or otherwise, to market, advertise or identify Defendants' products.

b. Otherwise infringing Plaintiff's marks;

c. Unfairly competing with Plaintiff in any manner whatsoever; and

d. Causing likelihood of confusion, injury to business reputation, or dilution of the distinctiveness of Plaintiff's symbols, labels, or forms of advertisement.

2. That Defendant be directed to file with this Court and serve on Plaintiff within ten days after the service of the injunction herein, a report in writing under oath, setting forth in detail the manner and form in which defendant has complied therewith;

3. That Defendant be required to deliver up and destroy all devices, literature, advertising and other material bearing the infringing designation;

4. That Plaintiff be awarded Defendants' trademark infringement profits after an accounting, and that such an award be trebled, pursuant to 15 USC §1117(a);

5. That Plaintiff be awarded past and future corrective advertising costs;

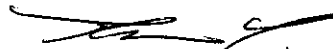
1 6. That Plaintiff be awarded exemplary and punitive damages in an amount
2 to be proven at trial.

3 7. That Plaintiff recover from Defendant its reasonable attorneys' fees and
4 costs in this suit, and that such an award be trebled, pursuant to 15 USC §1117(a); and

5 8. That Plaintiff has such other and further monetary or other relief as the
6 Court may deem just.

7 July 28, 2008

WEEMS LAW OFFICES

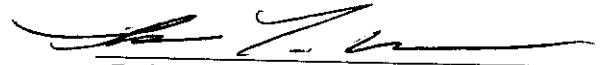
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11 Robert C. Weems, attorneys for Plaintiff
12 Motor Works LLC
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JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury of all issues so triable.

July 28, 2008

WEEMS LAW OFFICES



Robert C. Weems, attorneys for Plaintiff
Motor Works LLC

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS MOTOR WORKS, LLC	DEFENDANTS SAFER TECHNOLOGIES, INC., CERMA TECHNOLOGY, INC., GEROG ACKERMAN, MARY STRANAHAN, TIM STREIT, NICHOLAS STREIT, EDWARD HALBACH
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorney's (Firm Name, Address, and Telephone Number) Robert C. Weems, SBN 148156 (415) 259-0293 main WEEMS LAW OFFICES (415) 259-0108 fax Fair-Anselm Plaza, W. 2d Fl. 751 Center Blvd. Fairfax, CA 94930	Attorneys (If Known) <div style="text-align: right; font-size: 2em; font-family: cursive;"> RS 9 08 3608 </div>

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																
<table style="width: 100%;"> <tr> <td><input type="checkbox"/> 1 U.S. Government Plaintiff</td> <td><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input checked="" type="checkbox"/> 2 U.S. Government Defendant</td> <td><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</td> </tr> </table>	<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input checked="" type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width: 100%;"> <tr> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> </tr> <tr> <td>Citizen of This State <input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State <input type="checkbox"/> 4</td> <td>Citizen of Another State <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3</td> <td>Foreign Nation <input type="checkbox"/> 6</td> <td></td> <td></td> </tr> </table>	PTF	DEF	PTF	DEF	Citizen of This State <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State <input type="checkbox"/> 4	Citizen of Another State <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6		
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Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6																

IV. NATURE OF SUIT (Place an "X" in One Box Only)									
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS <table style="width: 100%;"> <tr> <th style="text-align: left;">PERSONAL INJURY</th> <th style="text-align: left;">PERSONAL INJURY</th> </tr> <tr> <td><input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury</td> <td><input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> </tr> </table>	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property
PERSONAL INJURY	PERSONAL INJURY								
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V. ORIGIN (Place an "X" in One Box Only)

<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 15 USC 1117

Brief description of cause:
 trademark infringement and unfair competition

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE: July 24, 2008

SIGNATURE OF ATTORNEY OF RECORD: 